

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

April 1, 2021 at 10:30 a.m.

1. [19-22401-E-7](#) **JOSEPH/CHRISTINA
BERTOLINO**

**ORDER TO APPEAR FOR
EXAMINATION RE: JOSEPH S.
BERTOLINO
3-18-21 [\[66\]](#)**

CASE CLOSED: 12/17/2019

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor on March 21, 2021. By the court's calculation, 11 days' notice was provided. The court set the hearing for April 1, 2021. Dckt. 66.

The Application for Order to Appear for Examination was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

Pursuant to the Order signed on March 18, 2021 (Dckt. 66), the Application for Order to Appear for Examination Re: Joseph S. Bertolino has been granted.

The examination is set to be conducted at 10:30 a.m. on April 1, 2021, via Zoom after the court has sworn in Joseph Bertolino through CourtCall.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on February 27, 2021. The court computes that 19 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$32.00 due on February 11, 2021.

The Order to Show Cause is XXXXX.

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$32.00.

March 18, 2021 Hearing

At the hearing the matter was continued and the court issued a subsequent order to show cause ordering Debtor and Debtor's Counsel to appear telephonically and explain to the court why the fees had not been paid and why they were willing to have the case dismissed for the failure to pay the \$32.00 filing fee. The court also stated that failure of Debtor and Counsel to appear at the April 1, 2021 would result in a \$750.000 corrective sanction.

April 1, 2021 Hearing

At the hearing XXXXXXXX

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Order to Show Cause is

XXXXX.

3. [20-22873](#)-E-7 KEVIN EHMKA
3 thru 4

MOTION TO CONVERT CASE FROM
CHAPTER 7 TO CHAPTER 13
3-4-21 [\[39\]](#)

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 4, 2021. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

Movant did not provide the amount of days required by the local rules for the relief requested. However, in light of the facts and circumstances of this case and Motion, the court shorten the notice period to the time given.

The Motion to Convert has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is ~~denied without prejudice~~.

Kevin Karl Ehmka ("Debtor") seeks to convert this case from one under Chapter 7 to one under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007).

No Declaration from the Debtor is provided but the Declaration of James L. Keenan, Debtor's Counsel. Dckt. 41.

Debtor's Counsel provides the following testimony under penalty of perjury:

1. Counsel is the attorney for the Debtor. Declaration, ¶ 1; Dckt. 41
2. The bankruptcy case was filed on June 4, 2020. *Id.*, ¶ 2.
3. The U.S. Trustee made multiple requests for documents to be produced by Debtor. *Id.* ¶ 3.
4. Those documents revealed that there were "omissions" from the "initial filings" made by Debtor under penalty of perjury. The testimony identifies these "omission" as including:
 - a. That Debtor failed to disclose a business that he recently closed; and
 - b. That Debtor did not disclose "all of his financial accounts" that were associated with his prior business.

Id. ¶ 4.

5. A 2004 Examination of the Debtor was conducted on February 22, 2021. *Id.* ¶ 5.
6. In the 2004 Examination Debtor disclosed:
 - a. Debtor began receiving unemployment the month before he filed bankruptcy; and
 - b. Debtor cashed out a retirement account in the six months before filing bankruptcy.

Neither of these were disclosed in the information provided under penalty of perjury in the "initial bankruptcy filings."

Id. ¶ 6.

7. In the 2004 Examination Debtor testified:
 - a. Debtor found a new job and his income increased since filing bankruptcy;
 - b. Debtor's income is now approximately \$125,000 a year; and
 - c. Debtor has not filed supplemental schedules and is not providing

the court with a copy of the Chapter 13 Plan he would propose to prosecute in good faith if the case is converted to Chapter 13.

Id. ¶ 7.

8. Given the “revelations” that came to light due to the U.S. Trustee’s multiple document productions and 2004 Examination, Debtor’s Counsel testifies that it was “suggested” (by whom is not identified) that the Debtor convert the case to one under Chapter 13 since it had been brought to light that he would not qualify for a discharge. *Id.* ¶ 8.
9. Debtor filed a request to convert the case, which the court ordered Debtor to set the motion for a noticed hearing. *Id.* ¶ 9.

On February 26, 2021, Tracy Hope Davis, the U.S. Trustee filed a Motion to Extend Deadline to file a Complaint Objecting to Debtor’s Discharge under 11 U.S.C. § 727. Dckt. 30. The U.S. Trustee moves for the extension on the grounds that the Office of the U.S. Trustee needs additional time to investigate issues identified during Debtor’s 2004 Examination, held on February 22, 2021, concerning the Debtor’s non-priority secured debt, relationships with his business entities, day trading activities, transfers between multiple bank and brokerage accounts as well as other matters concerning the accuracy and completeness of the schedules and statement of financial affairs in this case.

Decision

The Motion, as presented, causes the court concern. First, “missing in action” is the Debtor himself, mute and not providing any testimony. Debtor instead has elected to stand behind his attorney who provides second hand testimony.

Debtor has not updated the information provided under penalty of perjury in the Schedules and Statement of Financial Affairs. The court has no idea of what assets, transfer, and other pre-petition financial dealings have been done by Debtor. While this may be known to Debtor, Debtor’s counsel, and as discovered by the U.S. Trustee and Chapter 7 Trustee, the court is ignorant. Being ignorant, the court cannot make an intelligent ruling on the Motion.

Next, the court has no idea of what Debtor is proposing to accomplish through a Chapter 13 case and how that compares to what a Chapter 7 trustee can and should be doing in this case. It may be that Debtor’s plan is to have a Chapter 13 Plan which provide a 0% dividend to creditors with unsecured claims and all of the pre-petition undisclosed financial dealings and transfers remain undisclosed to the court and parties in interest.

Based on the information provided by Debtor under penalty of perjury in his Schedules and Statement of Financial Affairs (Debtor choosing to not provide his declaration in support of the Motion and no amended Schedules and Statement of Financial Affairs correcting the nondisclosures have been filed), he has no ability to perform a Chapter 13 plan. Dckt. 1.

In looking at the Statement of Financial Affairs, Debtor discloses that he is married, but states that his non-debtor spouse had no income in 2020 (the year the case was filed), 2019, or 2018. Dckt. 1 at 38-39. However, on Schedule I Debtor states that while he has no income, his non-debtor spouse has

gross income of \$7,800 a month working for the State of California, and having been so employed for six years. *Id.* at 33.

Based on the information under penalty of perjury provided by Debtor in this case, Debtor not providing the court with corrected information by filing amended schedules and statement of financial affairs, Debtor not providing the court with testimony in support of the Motion or what his plan is for a Chapter 13 Plan, and the court being uniformed as to how the Debtor could and would proceed in good faith in Chapter 13 as compared to a Chapter 7 trustee prosecuting the Chapter 7 case, the Motion is denied without prejudice. It may be that converting to a Chapter 13 is in the better interests of creditors, but Debtor has not shown so, or how Debtor will be able to prosecute a plan. Debtor having his attorney provide information about some unidentified employment that will provide six figure income for Debtor, in addition to his non-debtor spouse's almost six figure income, is not persuasive.

It may be that conversion is proper, once Debtor provides accurate, truthful information under penalty of perjury, so the denial of this Motion is without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Convert filed by Kevin Karl Ehmka ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Convert is ~~denied without~~ **prejudice.**

Final Ruling: No appearance at the April 1, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on February 26, 2021. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge is granted.

Tracy Hope Davis, the United States Trustee, ("Movant") moves to extend the deadline to file a complaint objecting to Kevin Karl Ehmka's ("Debtor") discharge because the U.S. Trustee needs additional time to review newly provided documents and the transcript from Debtor's Rule 2004 Examination on February 22, 2021, and to conduct and complete their investigation concerning the Debtor's non-priority secured debt, relationships with his business entities, day trading activities, transfers between multiple bank and brokerage accounts as well as other matters concerning the accuracy and completeness of the schedules and statement of financial affairs in this case in order to determine if an action under 11 U.S.C. § 727 is warranted in this matter.

The deadline for filing a complaint objecting to discharge was originally November 30, 2020, this was extended to March 1, 2021. Dckt. 27. The Motion requests that the deadline to object to Debtor's discharge be extended to May 3, 2021.

The court may, on motion and after a noticed hearing, extend the time for objecting to the entry of discharge for cause. FED. R. BANKR. P. 4004(b)(1). The court may extend that deadline where

the request for the extension of time was filed prior to the expiration of time for objection. *Id.*

The instant Motion was filed on February 26, 2021, before the deadline to object to the discharge of Debtor.

The court finds that in the interest of Movant to complete investigation, namely continuing to gather all necessary financial information about Debtor's assets, there is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted, and the deadline for Movant to object to Debtor's discharge is extended to May 3, 2021.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge filed by Tracy Hope Davis, the United States Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the deadline for Movant to object to Kevin Karl Ehmka's ("Debtor") discharge is extended to May 3, 2021.

FINAL RULINGS

5. [11-20679-E-7](#) BRANDON/LARAIN MADEROS ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-4-21 [\[54\]](#)

Final Ruling: No appearance at the April 1, 2021 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on March 4, 2021. The court computes that 28 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$11.00 due on February 18, 2021.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has been cured.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the April 1, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7, creditors, parties requesting special notice, and Office of the United States Trustee on February 19, 2021. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Professional Fees is granted.

Barry H. Spitzer, the Attorney ("Applicant") for Alan S. Fukushima and Hank Spacone, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period July 21, 2020, through February 19, 2021. The order of the court approving employment of Applicant was entered on August 7, 2020. Dckt. 15. Applicant requests fees in the amount of \$6,359.50 and costs in the amount of \$93.10.

Debtor filed a statement of Non-Opposition on March 4, 2021. Dckt. 151. Debtors' counsel recently substituted into the case and anticipates filing amendments to Schedule A/B, Schedule C and Statement of Affairs, including the merits of this motion. *Id.*

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of

Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Estate include: review of court file; significant communications with Trustee regarding the estate; significant communication with Debtor’s probate attorney; additional document review; attending the meeting of creditors; and briefing Trustee’s successor attorney (at no charge to the estate). The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a detailed billing invoice of services rendered and supporting evidence for the services provided, but does not provide a task billing analysis which provides the court with the categories of legal services provided and the total hours worked and dollar amounts charged. Even when such analysis appears “simple” to an applicant, it is even “simpler” for the applicant to prepare rather than having that task “assigned” to the court.

The court has constructed the following task billing analysis for Applicant that is necessary for determining the allowable compensation as follows:

General Case Administration: From the detailed billing statements the court estimates applicant spent 11.2 hours in this category. Tasks included in this category are: case discussion with Debtor’s attorney and Trustee’s Attorney; preparation for and attendance of First Meeting of Creditors; and preparation of the instant Motion (1.8 hours).

Efforts to Assess and Recover Property of the Estate: From the detailed billing statements the court estimates that Applicant worked with Debtor’s probate attorney regarding property of the Estate 4.6 hours in this category. Tasks included in this category are discussions with S. Sanders, Debtor’s probate attorney, and an associated discussion with Trustee.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Barry H. Spitzer	16.1	\$395.00	\$6,359.50
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$6,359.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$93.10 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Court Call	\$41.20	\$41.20
Postage		\$23.10
Copying	\$0.15 per page	\$28.80
		\$0.00
Total Costs Requested in Application		\$93.10

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$6,359.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$93.10 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$6,359.50
Costs and Expenses	\$93.10

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Barry H. Spitzer (“Applicant”), Attorney for Alan S. Fukushima and Hank Spacone, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Barry H. Spitzer is allowed the following fees and expenses as a professional of the Estate:

Barry H. Spitzer, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$6,359.50
Expenses in the amount of \$93.10,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.